IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 403 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

AMBIKA KIRANA STORES

Appearance:

MR ST MEHTA, APP for Appellant

MR DK MODI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 25/02/2000

C.A.V. JUDGEMENT

The State has filed this Appeal being aggrieved by the judgment and order of acquittal recorded by the learned Metropolitan Magistrate, Ahmedabad, on 6th April, 1991, in Criminal Case No. 761 of 1987, acquitting the

present respondents for the charges levelled against them under Sections 7(1), 7(5) and 16 of the Prevention of Food Adulteration Act.

2. On 23rd June, 1987, complainant Shri R.S. Patel, Food Inspector, State of Gujarat, visited Ambika Kirana Stores at 1445 hours at Delhi Chakla, Ahmedabad. Complainant was accompanied by panch Shevantilal Popatlal Shah. At Ambika Kirana Stores, original accused No.2 Keshavlal Atmaram Patel was present and he stated that accused No.3 Ramanbhai Atmaram Patel is also partner of the shop. Complainant - Food Inspector obtained chilly powder from Ambika Kirana Stores, by purchasing the same from accused No.2, a panchnama in the presence of Shevantilal Popatlal Shah and in the presence of accused No.2 was prepared and accordingly three samples were made, one was sent to Central Food Laboratory at Baroda and remaining two were sent to local health authority. Central Food Laboratory, Baroda vide its report dated 10th July, 1987 declared that the sample obtained as aforesaid was adulterated and therefore complainant processed the papers for obtaining sanction to prosecute the present accused i.e. present respondents herein and the consent was according to the complainant was accorded by Local Health Authority, Gujarat, under Section 20 of the Prevention of Food Adulteration Act. Thereafter,on 3rd September, 1987, a complaint in this case was also filed. A charge as per the procedure for the warrant triable cases, otherwise thereon police report, was followed by the learned Magistrate and charge was framed against the accused. After recording the evidence thereafter and hearing both the sides, learned Magistrate came to the conclusion that there was a breach of

mandatory Rule 16(c) because label attached to the sample was not signed by the competent authority and that the sanction was not also accorded by the competent authority nor the sanction was accorded by applying mind and there was some discrepancies in the evidence and, therefore, the learned Magistrate acquitted the appellants. Being aggrieved, this Appeal is filed by the State.

3. In original case, the accused No.1 Ambika Kirana Stores was the accused and respondent No.1 herein, the accused No.2 was Keshavlal Atmaram Patel, who is respondent No.2 herein while Ramanlal Atmaram Patel was accused No.3 originally and respondent No.3 herein.

4. Learned APP Mr. S.T. Mehta, vehemently urged and assailed the judgment of the Metropolitan Magistrate on the ground that the accused have been acquitted on very technical grounds. Learned APP submits that the nomenclature of the designation of the authority under R. 16(c) of the Prevention of Food Adulteration Act and under Sec. 20(1) of the Prevention of Food Adulteration Act, would not materially make any difference so as to acquit the accused. Previously, local Health Authority was the Deputy Director. It has come in the evidence, according to learned APP, their designations were changed to Assistant Commissioner and, therefore, the label attached to the sample bottles were signed and stamped in the name of Assistant Commissioner. The sanction is also accorded by the competent authority. Only on that ground, according to the learned APP, the accused are acquitted, but in fact, the Assistant Commissioner or Deputy Director are the same authority, only nomenclature of the designation is changed. Learned APP further submitted that other wise on facts, the prosecution has proved its case beyond reasonable doubt. The complainant and panch witness have been examined. Panch witness Shevantilal Popatlal Shah has corroborated the evidence of the complainant Food Inspector. Learned APP further submits that the judgment and order of the acquittal recorded by the Magistrate required to be set aside and accused are required to be convicted for the charges levelled against them and proved against them.

5. Learned Advocate Mr. D.K. Modi on behalf of the respondents stressed on the breach of the mandatory rules i.e. R.16(c) and he further urged that the sanction has not been accorded by the competent authority and the same is without application of mind. Learned Advocate Mr. Modi has submitted that there is no evidence on record that accused No.3 - respondent No.3 herein is any way connected with Ambika Kirana Stores, which has been made accused No.1 and respondent No.1 herein. Learned Advocate Mr. Modi has supported the decision of the learned Metropolitan Magistrate.

6. Having considered the rival contentions, two law points emerges very glaringly to be determined viz. (1) whether there was any breach of Rule 16(c) of the Prevention of Food Adulteration Act and (2) whether sanction was accorded by competent authority. Rule 16(c) reads as under :

16. Manner of packing and sealing the samples
All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely :

(a) xxxxxxxx

(b) xxxxxxx

(c) a paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such manner that the papers slip and the wrapper both carry a part of this signature or thumb impression :

Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb impression of the witness shall be taken in the same manner.

7. Now, the stress of the defence is on the fact that the container of the sample did not bear the signature, code and serial number of the Local (Health Authority). Therefore, the question is raised that on the date of incident i.e. on 23rd June, 1987, which was the Local Health Authority. Local Health Authority is defined by the Act vide Section 2 (viii-a) which reads as under :

2(viii-a) "Local (Health) Authority", in relation to a local area, means the officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in-charge of health administration in such area with such designation as may be specified therein;

8. Therefore, Local Authority must be authority notified by the State Government to be in-charge of health administration for such area. On the day of incident i.e. on 23rd June, 1987, the local authority as

per the notification of the State Government Part IV-A dated 24th November, 1982 was Deputy Director (Food)

under the Directorate, Food & Drugs Control Administration, Gujarat State, Ahmedabad. Now, this court has to see whether the label affixed on the sample bear the signature, code number and stamp of the Deputy Director (Food) as mentioned by the above said notification dated 24th November, 1982. In this regard, the evidence of complainant is material. In his evidence at Exh.6 in para 35 he admits that the paper slip which was pasted on the sample bottles contain the rubber stamp of Deputy Commissioner and Local Health Authority, Food and Drugs Administration, Gujarat State, Gandhinagar and it was signed by the Local Health Authority Mr. V.S. Bhatt. Therefore, it is clear that for the strict purposes of Prevention of Food Adulteration Act, the local health authority which was Deputy Director (Health) as per Notification dated 24th November, 1982 had not signed the paper slips attached to the sample and it was signed by the Deputy Commissioner, who was not notified under Sec. 2(viii-a) of the Prevention of Food Adulteration Act. Learned APP has vehemently argued that in evidence, it has come that vide GR dated 22nd August, 1986, Government has resolved that the designation of Director and Assistant Director has been changed to Assistant Commissioner, Deputy Commissioner and Jt. Commissioner. Learned APP has argued that this GR is on record and merely change in nomenclature when authority remains the same, it could be said that there is breach of Rule 17(c).

9. The argument of learned APP cannot be accepted for the simple reason that some mandatory provisions under the Prevention of Food Adulteration Act have been enacted to ensure the liberty of the citizen. The lapse is not mere technical. The lapse goes to the root of the matter. When Act requires vide Sec. 2(viii-a) that local health authority will be notified in official gazette by the government, then any other authority, may be the same person, cannot be accepted to be local health authority for the purpose of Sec. 2(viii-a) of the Prevention of Food Adulteration Act. Therefore, a clear breach of Rule 16(c) of the Prevention of Food Adulteration Act has been committed. If the intention was of the Government to change the nomenclature, then, the Government was required to notify the same under Sec. 2 (viii-a) of the Prevention of Food Adulteration Act. Unless this is done, the local health authority on the date of the incident was Deputy Director (Food), under the Directorate of Food and Drugs Control of Administration, Gujarat State as per the Notification of the Government dated 24.11.1982. Learned Magistrate was

correct, therefore, in coming to the conclusion that in this manner, there was breach of the mandatory Rule 16(c) of the Prevention of Food Adulteration Act, 1954, entitles the accused for the acquittal.

10. Now, so far as the next point regarding consent to prosecute is concerned, the sanction accorded is at Exh. 41. This sanction to prosecute has been accorded by Deputy Commissioner and local health authority, Food

and Drugs Administration, Gandhinagar, on 27th of August, 1987. Now, the question is who was the competent authority under Sec. 20(1) of the Prevention of Food Adulteration Act. This officer according to Sec. 20(1) of the Prevention of Food Adulteration Act must be either State Government or the Central Government or a person authorized in this behalf by general or a special order by the Central Government or the State Government. Now in the matter of STATE vs. KUTUBUDDIN ISAFALI KUSHALGADHWALA reported in 1980 (2)GLR 167, this Court ruled that Section 20 of the Act relates to institution of a prosecution and not commissioning of the offence. The point of time when the prosecution is instituted and not the point of time when the offence is committed is relevant. Therefore, this court has to examine that when sanction was accorded and when the prosecution is instituted i.e. 3rd September, 1987, who was a person authorised under Sec. 20(1) to accord the sanction. The relevant Notification of the State Government under Sec. 20(1) of the Prevention of Food Adulteration Act is dated 10th August, 1987. It clearly indicates that from the date of this Notification i.e. on or after 10th of August, 1987, the authority is empowered to sanction would be the authority to whom the State Government has conferred powers by its Notification under Sec. 20(1) of the Prevention of Food Adulteration Act and accordingly from 10th August, 1987 i.e. on the date of the above Notification, the Government authorised Deputy Municipal Commissioner, Ahmedabad Municipal Corporation, Ahmedabad under Section 20(1) of the Prevention of Food

Adulteration Act to be the authority to accord sanction for area within the limits of Ahmedabad Municipal Corporation. While on 27th August, 1987, i.e. after the date of the above Notification i.e. 10th August, 1987 vide Exh.41, Deputy Commissioner and Local Health Authorities, Food and Drugs Administration, Gandhinagar, has accorded sanction to the prosecution and on that strength this prosecution is instituted. If we examine

language of Sec. 20(1) it is clear that no prosecution shall be instituted without a valid consent to prosecute. Now, having regard to the above discussed circumstances, whether the sanction accorded by Exh.41 by the Deputy Commissioner can be said to be a valid consent or a consent by an authorized person by the State Government. The answer must be in negative in view of the above mentioned Notification dated 10th August, 1987. Therefore, this is a case where there is no legal and valid sanction and law requires that prosecution cannot be instituted without legal and valid sanction that too by authority or persons mentioned by Sec. 20(1) of the Prevention of Food Adulteration Act. The accused i.e. present respondents herein are required to be acquitted on this ground alone because the prosecution itself is not valid one and without valid consent to prosecute as per law. Learned Magistrate, therefore, did not error in concluding that there was any valid sanction.

11. In view of the above discussion, while discussing the above mentioned vital two law points, it clearly appears that the prosecution fails to establish the case against the accused, no more details are required to be discussed and decided.

12. In the result, this Appeal fails and dismissed.

---

p.n.nair